

PART 1205—PRIVACY ACT REGULATIONS

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AUTHORITY: 5 U.S.C. 552a and 1204

SOURCE: 54 FR 28662, July 6, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 1205.1 Purpose.

This subpart implements the Privacy Act of 1974, 5 U.S.C. 552a, (“the Act”) by prescribing the procedures by which individuals may determine the existence of, seek access to, and request amendment of Board records concerning themselves, and by stating the requirements that apply to Board employees’ use and dissemination of those records.

§ 1205.2 Policy and scope.

The Board’s policy is to apply these regulations to all records that can be retrieved from a system of records under the Board’s control by using an individual’s name or by using a number, symbol, or other means of identifying the individual. These regulations, however, do not govern the rights of parties in adversary proceedings before the Board to obtain discovery from adverse parties; those rights are governed by part 1201 and part 1209 of this chap-

ter. These regulations also are not intended to permit the alteration, either before or after the Board has issued a decision on an appeal, of evidence presented during the Board’s adjudication of the appeal.

§ 1205.3 Definitions.

The definitions of 5 U.S.C. 552a apply to this part. In addition, as used in this part:

(a) *Inquiry* means a request by an individual regarding whether the Board has a record that pertains to that individual.

(b) *Request for access* means a request by an individual to inspect or copy a record.

(c) *Request for amendment* means a request by an individual to change the substance of a particular record by addition, deletion, or other correction.

(d) *Requester* means the individual requesting access to or amendment of a record. The individual may be either the person to whom the requested record pertains, a legal guardian acting on behalf of the individual, or a representative designated by that individual.

§ 1205.4 Disclosure of Privacy Act records.

(a) Except as provided in 5 U.S.C. 552a(b), the Board will not disclose any personal record information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to any other agency, without the express written consent of the individual to whom the record pertains, or his or her agent or attorney.

(b) The Board’s staff will take necessary steps, in accordance with the law and these regulations, to protect the security and integrity of the records and the personal privacy interests of the subjects of the records.

Subpart B—Procedures for Obtaining Records

§ 1205.11 Access to Board records.

(a) *Submission of request.* Inquiries or requests for access to records must be submitted to the appropriate regional office of the Board, or to the Office of

the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419. If the requester has reason to believe the records in question are located in a regional office, the request must be submitted to that office. Requests submitted to the region must be addressed to the regional director at the appropriate regional office listed in appendix II of 5 CFR part 1201.

(b) *Form.* Each submission must contain the following information:

(1) The name, address, and telephone number of the individual to whom the record pertains;

(2) The name, address, and telephone number of the individual making the request if the requester is someone other than the person to whom the record pertains, such as a legal guardian or an attorney, along with evidence of the relationship. Evidence of the relationship may consist of an authenticated copy of: (i) the birth certificate of the minor child, and (ii) the court document appointing the individual legal guardian, or (iii) an agreement for representation signed by the individual to whom the record pertains;

(3) Any additional information that may assist the Board in responding to the request, such as the name of the agency that took an action against an individual, or the docket number of the individual's case;

(4) The date of the inquiry or request;

(5) The inquirer's or requester's signature; and

(6) A conspicuous indication, both on the envelope and the letter, that the inquiry is a "PRIVACY ACT REQUEST".

(c) *Identification.* Each submission must comply with the identification requirements stated in § 1205.13 of this part.

(d) *Payment.* Records usually will not be released until fees have been received.

§ 1205.12 Time limits and determinations.

(a) *Board determinations.* The Board will acknowledge the request and make a determination on it within 10 workdays after it receives the request, except under the unusual circumstances described below:

(1) When the Board needs to obtain the records from other Board offices;

(2) When it needs to obtain and examine a large number of records;

(3) When it needs to consult with another agency that has a substantial interest in the records requested; or

(4) When other extenuating circumstances prevent the Board from processing the request within the 10-day period.

(b) *Time extensions.* When unusual circumstances exist, the Board may extend the time for making a determination on the request for no more than 10 additional workdays. If it does so, it will notify the requester of the extension.

(c) *Improper request.* If a request or an appeal is not properly labeled, does not contain the necessary identifying information, or is submitted to the wrong office, the time period for processing the request will begin when the correct official receives the properly labeled request and the necessary information.

(d) *Determining officials.* The Clerk of the Board or a regional director will make determinations on requests.

§ 1205.13 Identification.

(a) *In person.* Each requester must present satisfactory proof of identity. The following items, which are listed in order of the Board's preference, are acceptable proof of the requester's identity when the request is made in person:

(1) A document showing the requester's photograph;

(2) A document showing the requester's signature; or

(3) If the items described in paragraphs (a)(1) and (2) of this section are not available, a signed statement in which the requester asserts his or her identity and acknowledges understanding that misrepresentation of identity in order to obtain a record is a misdemeanor and subject to a fine of up to \$5,000 under 5 U.S.C. 552a(i)(3).

(b) *By mail.* The identification of a requester making a request by mail must be certified by a notary public or equivalent official or contain other information sufficient to identify the requester. Sufficient information could be the date of birth of the requester

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and some item of information in the record that only the requester would be likely to know.

(c) *Parents of minors, legal guardians, and representatives.* Parents of minors, legal guardians, and representatives must submit identification under paragraph (a) or (b) of this section. Additionally, they must present an authenticated copy of:

- (1) The minor's birth certificate, and
- (2) The court order of guardianship, or
- (3) The agreement of representation, where appropriate.

§ 1205.14 Granting access.

(a) The Board may allow a requester to inspect records through either of the following methods:

(1) It may permit the requester to inspect the records personally during normal business hours at a Board office or other suitable Federal facility closer to the requester; or

(2) It may mail copies of the records to the requester.

(b) A requester seeking personal access to records may be accompanied by another individual of the requester's choice. Under those circumstances, however, the requester must sign a statement authorizing the discussion and presentation of the record in the accompanying individual's presence.

§ 1205.15 Denying access.

(a) *Basis.* In accordance with 5 U.S.C. 552a(k)(2), the Board may deny access to records that are of an investigatory nature and that are compiled for law enforcement purposes. Those requests will be denied only where access to them would otherwise be unavailable under Exemption (b)(7) of the Freedom of Information Act.

(b) *Form.* All denials of access under this section will be made in writing and will notify the requester of the right to judicial review.

§ 1205.16 Fees.

(a) No fees will be charged except for making copies of records.

(b) Photocopies of records duplicated by the Board will be subject to a charge of 10 cents a page.

(c) If the fee to be assessed for any request is less than \$25 (the cost to the

Board of processing and collecting the fee), no charge will be made to the requester.

(d) Fees for duplicating audio tapes and computer records will be charged at a rate representing the actual costs to the Board, as those costs are shown below.

(1) Audio tapes will be provided at a charge of \$5.75 for each cassette tape.

(2) Computer printouts will be provided at a charge of 1 cent a page.

(3) Records reproduced on magnetic computer tapes will be provided at a charge of \$21 a tape.

(4) Records produced on computer diskettes will be provided at a charge of \$2.70 a diskette.

(e) If duplication costs exceed \$25, the Board will notify the requester of the estimated amount before copying the records.

(f) When the Board determines that charges for a request are likely to exceed \$250, it will require the requester to pay the entire fee before it continues to process the request.

(g) The Board will provide one copy of the amended parts of any record it amends free of charge as evidence of the amendment.

Subpart C—Amendment of Records

§ 1205.21 Request for amendment.

A request for amendment of a record must be submitted to the director of the appropriate regional office, or to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419, depending on which office is maintaining the record. The request must be in writing, must be identified conspicuously on the outside of the envelope and the letter as a "PRIVACY ACT REQUEST," and must include the following information:

(a) An identification of the record to be amended;

(b) A description of the amendment requested; and

(c) A statement of the basis for the amendment, along with supporting documentation, if any.

§ 1205.22 Action on request.

(a) *Amendment granted.* If the Board grants the request for amendment, it will notify the requester and provide him or her with a copy of the amendment.

(b) *Amendment denied.* If the Board denies the request for amendment in whole or in part, it will provide the requester with a written notice that includes the following information:

- (1) The basis for the denial; and
- (2) The procedures for appealing the denial.

§ 1205.23 Time limits.

The regional director or the Board will rule on a request for amendment within 10 workdays of receipt of the request in the regional office or the Office of the Clerk except under the unusual circumstances described in paragraphs (a)(1) through (a)(4) of § 1205.12 of this part.

Subpart D—Appeals

§ 1205.31 Submitting appeal.

(a) A partial or complete denial, by the Clerk of the Board or a regional director, of a request for amendment may be appealed to the Chairman, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419.

(b) Any appeal must be in writing, must be clearly and conspicuously identified as a Privacy Act appeal on both the envelope and letter, and must include:

- (1) A copy of the original request for amendment of the record;
- (2) A copy of the denial; and
- (3) A statement of the reasons why the original denial should be overruled.

[54 FR 28662, July 6, 1989, as amended at 55 FR 39911, Oct. 1, 1990; 59 FR 65243, Dec. 19, 1994]

§ 1205.32 Decision on appeal.

(a) The Chairman will decide the appeal within 30 working days unless that official determines that there is good cause for extension of that deadline. If an appeal is improperly labeled, does not contain the necessary information, or is submitted to an inappropriate official, the time period for processing

the appeal will begin when the Chairman receives the appeal and the necessary information.

(b) If the request for amendment of a record is granted on appeal, the Chairman will direct that the amendment be made. A copy of the amended record will be provided to the requester.

(c) If the request for amendment of a record is denied, the Chairman will notify the requester of the denial and will inform the requester of:

- (1) The basis for the denial;
- (2) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A); and

(3) The right to file a concise statement with the Board stating the reasons why the requester disagrees with the denial. This statement will become a part of the requester's record.

[55 FR 39911, Oct. 1, 1990, as amended at 59 FR 65243, Dec. 19, 1994]

PART 1206—OPEN MEETINGS

Subpart A—Purpose and Policy

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Subpart B—Procedures

- 1206.4 Notice of meeting.
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- 1206.6 Decision to close meeting.
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Subpart C—Conduct of Meetings

- 1206.11 Meeting place.
- 1206.12 Role of observers.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 54 FR 20367, May 11, 1989, unless otherwise noted.

Subpart A—Purpose and Policy

§ 1206.1 Purpose.

The purpose of this part is to prescribe the procedures by which the Board will conduct open meetings in accordance with the Government in the Sunshine Act (5 U.S.C. 552b) ("the Act").